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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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prevent clearly unwarranted
invasion of personal privacy.

File: SRC 01 189 59321

Office: TEXAS SERVICE CENTER

Date:

JAN - 8 2003

IN RE: Petitioner:

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act,
8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner processes, enriches, fortifies and prepares rice that is sold to supermarkets on a wholesale and retail basis. It seeks to continue to employ the beneficiary in the United States as its co-owner and general manager for a period of three years. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, counsel submits evidence certifying the salary that has been paid the beneficiary for his position as Director of the petitioner's subsidiary abroad. Counsel states that the beneficiary is not only an executive of the new subsidiary, but he is also a co-owner of the enterprise abroad as he owns 8.33% of the shares of the stock in that company. Counsel argues that in his executive position of Director of the petitioner, he receives general supervision and direction only from higher level executives such as the company's President and Vice-President. Counsel further states that in performing his duties, the beneficiary exercises discretionary decision-making authority as to the marketing and public relations strategies. Counsel requests that the visa petition be approved.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The issue in this proceeding is whether the petitioner has

established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner described the beneficiary's proposed job duties as follows:

He is setting the standards for production and general guidelines for the company which must be followed and executed. He makes decisions that will ensure the company is operating efficiently and effectively. He is directly responsible for the employees and has day-to-day discretionary authority with regard the hiring and firing of personnel.

The record contains an additional statement as to the beneficiary's specific job duties:

[REDACTED] current duties include managing company assets not individuals. While his present duties do not include managing a subordinate staff, in accordance with existing expansion plans, [REDACTED] will be overseeing the company's new sales staff including Andres F. Roa Solano and Juan D. Roa Solano.

The record shows that the petitioner was incorporated on May 11, 1999 in the State of Florida. This visa petition was filed on May 22, 2001. At the time of filing, the petitioning corporation employed five persons, including the beneficiary.

In this case, the descriptions of the beneficiary's job duties are insufficient to warrant a finding that the beneficiary will be employed in a managerial capacity. At the time of filing, the beneficiary had been relegated to the number three job in a five person office. It appears that the beneficiary will be performing operational rather than managerial duties. Even given the petitioner's expansion plan that calls for the beneficiary to eventually oversee a two person sales staff, he petitioner has provided insufficient evidence to establish that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company.

The petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. The beneficiary is an individual performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.